



STATE OF NEW JERSEY

In the Matters of James Lopera,
et. al., Bergen County

**FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION**

CSC Docket Nos. 2022-498, *et. al.*

Classification

ISSUED: NOVEMBER 22, 2021 (JET)

James Lopera, Robert Marini, and Ryan O’Neill, represented by Stephen B. Hunter, Esq., appeal the decisions of the Division of Agency Services (Agency Services) that the proper classification of their positions with Bergen County are County Correctional Police Officer. Since these matters concern similar issues, they have been consolidated herein.

As background, in 2015, the appointing authority eliminated the Bergen County Police Department and realigned its functions with the Bergen County Sheriff’s Office. For a full explanation of the circumstances involving the realignment of the Bergen County Police Department’s functions to the Bergen County Sheriff’s Office, see *In the Matter of County Police Officers, Bergen County Sheriff’s Office* (CSC, decided June 17, 2017).¹ At some point in 2017 or 2018, in order to preserve the positions in the Bergen County Police Department, the Police Benevolent Association (PBA) Local 49 requested that this agency conduct classification reviews on behalf of several employees.² PBA Local 49 initially identified 13 individuals in

¹ The circumstances pertinent to the reorganization of the County Police Department to the Sheriff’s Office as presented in the above noted prior decision are incorporated herein by way of reference.

² In a prior decision, the PBA alleged that the appointing authority was utilizing the titles of County Correctional Police Officer, Sheriff’s Officer, and County Police Officer interchangeably, and as such, Agency Services received several requests for classification reviews, including Lopera, Marini and O’Neill. In that matter, the Commission did not decide the allegations pertaining to the misclassification of the County Correctional Police Officers, as it was beyond the scope of the issues presented in that matter. See *In the Matter of Bergen County Sheriff and County Police Officer Title Series* (CSC, decided October 21, 2020). Further, although the appellants were not represented by PBA Local 49, the record reflects that they are represented by PBA Local 134, which did not submit the appellants’ classification reviews in this matter.

its complaint. Upon receipt of that information, Agency Services, by way of a telephone conference, contacted the appointing authority in order to discuss the PBA's concerns. Although the appellants were not named or represented by the PBA, as a result of the information Agency Services obtained from the appointing authority, it requested Position Classification Questionnaires (PCQs) to be submitted by the appellants, as it was believed that they were performing out-of-title duties. The requests were held in abeyance due to ongoing appeals and litigation pertaining to the elimination of the Bergen County Police Department.³ Due to the time that elapsed from the time the initial PCQs were requested to the time the Bergen County litigation was settled, Agency Services requested new PCQs to be individually submitted by the employees, which were received on February 26, 2021. As such, Agency Services conducted the appellants' classification reviews pursuant to *N.J.A.C. 4A:3-3.9(d)*.

At the time the employees filed for a classification review, they were serving as County Correctional Police Officers. The employees' positions are located in the Bergen County Sheriff's Office, they do not perform supervisory duties, and they report to Tashara Windley, a Sheriff's Officer Lieutenant. They sought a reclassification contending that their K-9 assignments are outside of the duties performed in their permanent title of County Correctional Police Officer. In support of their requests, the employees submitted PCQs detailing the different duties that they performed. Based on a review of all documentation supplied, Agency Services concluded on July 8, 2021, that the appropriate classification of the positions is County Correctional Police Officer.

The July 8, 2021 classification determination indicated that a review of the appellants' positions revealed that some of their duties constitute out-of-title work. Specifically, Agency Services indicated that the appellants' assignments outside of the jail area, including assisting local police departments, conducting searches outside of the facility, and performing assignments in other county buildings, are considered out-of-title work, and, as such, must be removed.⁴ The July 8, 2021 classification determination also indicated that, since the majority of duties are performed in and around the Bergen County Jail, their reporting relationship to a Sheriff's Officer Lieutenant appears to be inappropriate.

³ By way of a September 15, 2020 settlement agreement that was acknowledged by this agency, Lopera, Marini, and O'Neill were reassigned to the Sheriff's Office effective November 27, 2020. In that prior decision, the Civil Service Commission (Commission) ordered that it was appropriate for Agency Services to proceed with the classification reviews that were held in abeyance. *See In the Matter of Bergen County Sheriff and County Police Officer Title Series, supra.*

⁴ The July 8, 2021 classification determination indicated that duties including searching the court house could remain since it pertains to the safety of inmates that are transferred to the courtroom. The July 8, 2021 classification determination indicated that, if the need to assist local police department remains, then the appointing authority has the option of implementing a lateral title change from County Correctional Police Officer to Sheriff's Officer pursuant to *P.L. 2019, c.247* and upon completion of additional training.

On appeal to the Commission, the appellants maintain that they are not performing their duties on an out-of-title basis, as K-9 duties are consistent with the examples of work section in the job specification for County Correctional Police Officer. Specifically, the appellants state that the examples of work section in the job specification for County Correctional Police Officer indicate that incumbents “may take part in a specialized unit requiring additional training and/or certification, such as SWAT, SORT/SOG – Special Operations Group – Bomb Squad, Hazmat, K-9, Mass Arrest Response Team (MART), or Hostage/Crisis Negotiations Team. As such, they argue that none of their duties should be removed pursuant to the July 8, 2021 classification determination.

In support, the appellants provide a copy of a June 16, 2021 e-mail⁵ from the appointing authority to Agency Services, which indicates, in pertinent part, that the appellants indicated in their PCQs that the majority of their assignments include patrolling the grounds of the jail and the court complex, which constitutes the jail perimeter.⁶ The appointing authority contended that the appellants indicated in the PCQs that only a small minority of their duties constitute K-9 duties. Moreover, the appointing authority stated that the K-9 assignments are consistent with the examples of work section in the job specification for County Correctional Police Officer, as few, if any, of the K-9 duties performed as County Correctional Police Officers can be viewed as “out-of-title” work.

The appointing authority explained that the appellants are assigned to a specialized unit, and as such, their K-9 assignments require them to occasionally complete assignments outside of the jail perimeter. The appointing authority asserted that the appellants participation in the specialized units require them to respond beyond the confines of the jail and the jail perimeter. The appointing authority stated that, if the K-9 duties were removed, it would effectively render their specialized unit as inoperative. The appointing authority added that such assignments are beneficial to the Sheriff’s Office, as its Sheriff’s Officers and Correctional Police Officers attend K-9 training and utilize the same kennel, and as such, the K-9 unit is utilized for detection of explosives and narcotics, tracking criminals, and apprehension. The appointing authority asserted that the K-9 unit is a resource that may be used by local police departments if necessary, and as such, when a local police department requires a K-9 unit, the Sheriff’s Office can assign Sheriff’s Officers and County Correctional Officers to assist in those jurisdictions. The appointing authority indicated that, if the K-9 duties are restricted to the jail perimeter, it would deprive the Sheriff’s Office the ability to provide K-9 assistance to the local jurisdictions when an emergent situation occurs. Moreover, the appointing authority asserted that County Correctional Police Officers were granted

⁵ The June 16, 2021 e-mail was submitted by Daniel Zwillenberg, Esq.

⁶ The appointing authority explained that the appellants indicated in the PCQs that they perform such duties 70% to 90% of the time.

full police powers by way of the passage of legislation. *See L. 2017, c. 293, section 2, eff. May 1, 2018.*⁷ As such, the appointing authority states that, when off-duty, County Correctional Police Officers are authorized to carry guns, are expected to react appropriately if they witness a crime anywhere in the State of New Jersey, and have the authority to make arrests. As such, absent a clear legislative directive, it argues that it would not be in the public interest to limit the ability of County Correctional Police Officers to perform K-9 duties.

CONCLUSION

The definition section of the job specification for County Correctional Police Officer states:

Under supervision during an assigned tour of duty within an adult county correctional facility or institution, performs a wide variety of tasks in support of the safety, security and welfare of inmates, facility personnel and visitors; performs other related duties as required.

Initially, this agency requested the appellants to submit their classification reviews pursuant to *N.J.A.C. 4A:3-3.9(d)*. Although the classification reviews could not be completed at the time they were initially submitted due to pending litigation involving the appointing authority's reorganization, the Commission ordered those matters to be held in abeyance until such pending matters were resolved, and that the employees would be able to pursue their classification requests after the matters were settled. *See In the Matter of County Police Officers, Bergen County Sheriff's Office, supra*. Thereafter, the appellants submitted new PCQs, which were received by this agency in February 2021. In this matter, it is clear that a position classification review was necessary in order to determine whether the employees were performing appropriate duties. *N.J.A.C. 4A:3-3.4* provides that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds. It is this agency's responsibility to conduct classification reviews in order to determine if positions are properly classified in accordance with the job specifications for the title in question. *See also, N.J.A.C. 4A:3-3.9(d)*.

In the instant matter, Agency Services properly determined that the appropriate classification of the employees' positions are County Correctional Police

⁷ *L. 2017, c. 293, section 2* amended *N.J.S.A. 2A:154-3*, establishing that County Correctional Police Officers in the competitive class of Civil Service "shall, by virtue of [their] appointment and in addition to any other power or authority, be empowered to act as officers for the detection, apprehension, arrest, and conviction of offenders against the law . . . and shall have full power of arrest for any crime committed in the officer's presence anywhere within the territorial limits of the State of New Jersey."

Officer. The classification determination indicated that the majority of the employees' duties (over 50%) constituted conducting K-9 patrol within the jail and jail perimeter; detection of narcotics and explosives; ensuring the safety and security of the inmates and facility personnel; ensuring that prison cells are free from contraband; maintaining security for county bank deposits; transporting inmates to and from the jail; assisting other agencies with K-9 assignments, car searches, SWAT teams, and search warrants; and performing K-9 inspections and patrols of an adjacent county building. In addition, the appellants' supervisor indicated on the PCQ that their most important duties are maintaining the security of the perimeter of the Bergen County Jail, and maintaining security during high risk transports. Moreover, the appointing authority agreed in the PCQs that the employees were performing such duties.

With respect to the arguments that Agency Services improperly determined that the K-9 duties that are performed outside of the jail perimeter should be removed, as doing so would be detrimental to the appointing authority and to local jurisdictions that may require the assistance of the K-9 unit, the Commission is not persuaded. Initially, the examples of work section in the job specification for County Correctional Police Officer indicates that the incumbents in that title "**may** take part in a specialized unit ... such as ... K-9." Therefore, the job specification for the County Correctional Police Officer title does not specifically indicate that they will be assigned to perform, nor are they required to accept, the assignment of such duties. Incumbents are not required to complete all the duties listed in the examples of work section, but rather, must be properly classified in their position as consistent with the definition section in the job specification for the title. Additionally, the examples of work are for illustrative purposes only with respect to a particular position. Moreover, and most importantly, only K-9 duties that are in conjunction with an incumbents duties as a County Correctional Police Officer can be considered in-title. For example, K-9 duties assisting another law enforcement entity that are not in conjunction with or pertaining to the jail or inmates is not permitted.

Although the appellants and the appointing authority correctly state that County Correctional Police Officers were granted police powers, the applicable law does not specifically state that Correctional Police Officers, outside of their regular duties, are to utilize such police powers outside of the jail perimeter. As such, except for the transportation of inmates to and from the courthouse, and conducting searches of the courthouse, the Commission finds that any K-9 duties performed by County Correctional Officers are to be reserved to the jail perimeter and only in conjunction with correctional matters. The Commission finds that any K-9 duties performed outside of the jail perimeter or not in conjunction with correctional matters constitutes out-of-title work and must be removed, as those duties are not related to the safety, security, and welfare of inmates, facility personnel, or visitors.

With respect to the arguments that the K-9 unit is a specialized unit, and it would be rendered ineffectual if the appellants and other County Correctional Police Officers are not permitted to continue with their K-9 duties, such information does not change the outcome of this matter. In this regard, deference is normally given to an agency's choice in organizing its functions, considering its expertise, so long as the selection was responsive to the purpose and function of the agency. *See In the Matter of Gloria Iachio, Docket No. A-3216-89T3* (App. Div., Jan. 10, 1992). (The appointing authority determined that the organizational needs of each of the various Bureaus necessitated the use of individual unit scopes for each of the respective Bureaus). Additionally, an appointing authority has the right to determine the organizational structure of its operation. The New Jersey Administrative Code does not mandate that local jurisdictions spend funds to make promotional appointments, and the Commission does not have any authority over fiscal decisions of local jurisdictions. As long as there are no improper reporting relationships or misclassifications, how the office is organized or how often the office is reorganized is not under the jurisdiction of the Commission or reviewable in the context of a classification appeal. *See In the Matter of David Kelso, et. al.* (CSC, decided May 2, 2018). Since the Commission does not have jurisdiction to address the appointing authority's organizational structuring in response to the July 8, 2021 classification determination, such issues do not need be addressed in this matter. Further, it is clear that the appointing authority may continue to have its specialized K-9 unit so long as it is staffed appropriately, such as with Sheriff's Officers.

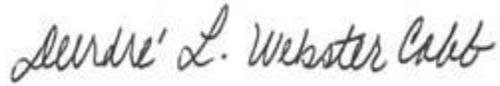
As noted in the July 8, 2021 classification determination, *N.J.A.C. 4A:3-3.5(c)1* states that within 30 days of receipt of the classification determination, the appointing authority shall either effect the required change in the classification of an employee's position, assign duties and responsibilities commensurate with the employee's current title, or reassign the employee duties and responsibilities to which the employee has permanent rights. Accordingly, upon receipt of this decision, the appointing authority is directed to immediately contact Agency Services and indicate that it has removed the out-of-title duties as noted above.

ORDER

Therefore, it is ordered that this appeal be denied. Upon receipt of this decision, the appointing authority is to immediately notify Agency Services that it has removed the out-of-title duties.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 17TH DAY OF NOVEMBER 2021



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